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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No. \_\_\_\_\_

Telephone Number:

Refer Reply To:  
CC:TEGE:EB:EC  
PLR-113951-07

Date:  
August 09, 2007

Employer =

Option 1 =

Option 2 =

Option 3 =

Option 4 =

a =b =C =d =W =X =y =
$$\underline{Z} =$$

Dear \_\_\_\_\_ :

This is in response to your letter of March 16, 2007, in which you asked for consent to revoke four elections that you made under § 83(b) of the Internal Revenue Code.

You represent that on February 16, 2007, you exercised four incentive stock options (ISOs) granted to you by Employer. The stock underlying the ISOs was subject to a substantial risk of forfeiture which lapsed according to a vesting schedule set forth in the option grant. Option 1 was for a shares of stock. At the time of exercise, w% of the stock was nonvested. The remainder of the stock was vested. Option 2 was for b shares of stock. At the time of exercise, x% of the stock was nonvested. The remainder of the stock was vested. Option 3 was for c shares of stock. At the time of exercise, y% of the stock was nonvested. The remainder of the stock was vested. Option 4 was for d shares of stock. At the time of exercise, z% of the stock was nonvested. The remainder of the stock was vested.

On March 2, 2007, you filed four elections under § 83(b) of the Code with the Internal Revenue Service Center where you file your individual income tax return. The § 83(b) elections referenced all the stock received pursuant to your exercise of Option 1 through Option 4, not just the nonvested stock. On March 16, 2007, you sent a letter to this office requesting consent to revoke the § 83(b) elections with respect to the stock transferred to you pursuant to your exercise of Option 1 through Option 4.

Section 83 of the Code sets forth the rules for transfers of property in connection with the performance of services. Section 83(a) provides that the excess of the fair market value of the property transferred, at the time the property becomes substantially vested, over the amount paid for the property shall be included as compensation in the gross income of the person who performed the services in the taxable year in which the property becomes substantially vested. Property is substantially vested when it is either transferable or not subject to a substantial risk of forfeiture. Under § 83(c)(1), the rights of a person in property are subject to a substantial risk of forfeiture if such person's rights to full enjoyment of the property are conditioned upon the future performance of substantial services by any individual.

You have represented that Option 1 through Option 4 were ISOs. In that case, the stock with respect to which the § 83(b) elections were filed could not be the subject of such an election for general federal income tax purposes. See § 83(e)(1). For general federal income tax purposes, ISOs are taxed under the rules of § 421 of the Code. Under those rules, if a share of stock is transferred to an individual in a transfer in which the requirements of § 422 are met, then no income results to the individual when the option is granted or exercised.

However, § 421 of the Code does not apply for alternative minimum tax (AMT) purposes. See § 56(b)(3). Thus, for AMT purposes, compensation income attributable to an ISO is determined under the rules of § 83.

For AMT purposes, when an ISO is exercised, if the optioned stock is either transferable or not subject to a substantial risk of forfeiture ("substantially vested"), the optionee immediately realizes compensation income under § 83(a), in an amount equal to the excess of the fair market value of the stock on the date of exercise over the sum of (1) the amount (if any) paid for the ISO and (2) the ISO's exercise price.

However, if ISO stock is substantially nonvested when transferred (both nontransferable and subject to a substantial risk of forfeiture), then for AMT purposes, unless a § 83(b) election is filed, § 83(a) applies to the stock upon the earlier of (1) the date that the stock becomes substantially vested, or (2) the date that the individual disposes of the stock. In such cases, under § 83(a), the optionee realizes compensation income, for AMT purposes, for the year in which the applicable triggering event occurs.

Section 83(b)(1) provides that the person in connection with whose services the property is transferred may elect to include in gross income for the taxable year of transfer the excess of the fair market value of the property over the amount paid for it. Section 83(b)(2) states that an election under § 83(b)(1) shall be made not later than 30 days after the date of transfer of the property and may not be revoked without the consent of the Secretary. If a § 83(b) election is made with respect to ISO stock for AMT purposes, the § 83(b) election can only be made on substantially nonvested ISO stock.

Section 1.83-2(f) of the Income Tax Regulations provides that consent to revoke an election under § 83(b) will be granted only in a case where the transferee is under a mistake of fact as to the underlying transaction and must be requested within 60 days of the date on which the mistake first became known to the person who made the election.

The Service has recognized the principle that an election made under the Code or regulations may be revoked on or before the due date for making the election. Section 2.08 of Rev. Proc. 2006-31, 2006-1 I.R.B. 32 provides that a request for consent to revoke a § 83(b) election will generally be granted if the request is filed on or before the due date of making that § 83(b) election.

In the instant case, you filed your request to revoke your March 2, 2007, § 83(b) elections for Option 1 through Option 4 within the 30 day time period allowed under § 83(b) for making the election. However, to the extent the § 83(b) elections applied to stock that was substantially vested upon transfer on February 16, 2007, the elections were not valid. The § 83(b) elections filed on March 2, 2007, were only valid for stock that was substantially nonvested upon transfer. Accordingly, we conclude that consent

to revoke your § 83(b) elections is granted only to the extent that it relates to substantially nonvested stock.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent. A copy of this letter should be attached to your income tax return for 2007.

Sincerely yours,

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CATE LIVINGSTON FERNANDEZ  
Chief, Executive Compensation Branch  
Office of Division Counsel/Associate  
Chief Counsel (Tax Exempt and  
Government Entities)